

June 9, 2006

Mary Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2nd floor  
Boston, MA 02110

**Re: Berkshire Gas Company, D.T.E. 06-27**

Dear Ms. Cottrell:

On February 28, 2006, pursuant to M.G.L. c. 164, § 94A, the Berkshire Gas Company (“Berkshire” or “Company”) filed with the Department of Telecommunications and Energy (“Department”) a petition for approval and authorization to enter into a gas sales agreement (“Proposed Agreement”) with Coral Energy Resources, L.P. (“Coral”). On March 9, 2006, the Department opened this proceeding and the Attorney General intervened on March 22, 2006. Pursuant to the hearing officer’s schedule, the Attorney General now submits this letter as his Reply Brief.<sup>1</sup>

## **I. ARGUMENT**

In its Reply Brief, the Company stated:

In the fall of 2004, Berkshire became aware that the AFPA [Amended Fuel Purchase Agreement] resource would no longer be available, in part, because the plant operator was making a permanent release of its gas transportation capacity on the Tennessee system.

---

<sup>1</sup> This brief is not intended to respond to every argument the Company has made or position it has taken. Rather, it is intended to respond only to the extent necessary to assist the Department in its deliberations, *i.e.*, to provide further information, to correct misstatements or misinterpretations, or to provide omitted context. Therefore, silence by the Attorney General in regard to any particular argument in another party’s brief should not be interpreted as assent.

*Berkshire Gas Company's Initial Brief*, at 3. The Attorney General requests that the Department to strike this statement from the Company's Initial brief.<sup>2</sup>

In the evidentiary hearing, the Attorney General raised questions about how the Company handled the loss of the AFPA peaking supply in order to determine the Company's prudence and whether Berkshire had enforceable rights under the AFPA that it failed to exercise to mitigate the rate impact on customers. Tr. at 46-49. The Company objected to the questions, asserting that they were beyond the scope of the proceeding. *Id.* At that time, cross-examination on this issue was suspended until written motions were filed. Tr. at 51. The Hearing Officer ruled that the Company must file a written motion and supporting arguments in support of its position by June 9, 2006 and the Attorney General's opposition to the Company's motion would be due June 20, 2006. *Id.*

Notwithstanding the Hearing Officer's ruling, the Company in its Initial Brief made factual statement quoted above that directly relates to the prudence issue. The Attorney General's cross-examination, which focused, in part on Berkshire's knowledge of the capacity release and the unavailability of the resource under the AFPA, was suspended by the Hearing Officer's ruling. Berkshire cannot now make unsupported statements in support of a position that the Attorney General was denied the opportunity to cross examine on.

The Attorney General requests the Department strike this statement from the Company's Initial Brief and to clarify that the Department will review any factual issues surrounding the loss of the AFPA when it reviews the motions on the scope of the proceeding and, potentially, in an evidentiary hearing on the Company's seeming failure to pursue its rights under the AFPA to mitigate the rate impacts on customers.

---

<sup>2</sup> "Where an objection is raised to an argument by an opponent that is not supported by the record, the Department may strike all or part of the argument." *Fitchburg Gas and Electric Light Company*, D.P.U. 19084, at 6 (1977).

Respectfully submitted,

THOMAS F. REILLY  
ATTORNEY GENERAL

By: \_\_\_\_\_  
Jamie M. Tosches  
Assistant Attorney General  
Utilities Division  
Public Protection Bureau  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200

Dated: June 9, 2006

cc: John J. Keene, Jr., Esq., Hearing Officer  
Service List